



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 591**

**IN THE MATTER
OF
SYLVIA KILLION**

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Sylvia Killion ("Killion") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 10, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Killion. The Commission has concluded its inquiry and, on September 23, 1998, found reasonable cause to believe that Killion violated G.L. c. 268A.

The Commission and Killion now agree to the following findings of fact and conclusions of law:

1. Killion was, during the time here relevant, the Department of Mental Health ("DMH") Southeastern ("SE") Area Management Information Systems ("MIS") director. As such, Killion was a state employee as that term is defined in G.L. c. 268A, §1.
2. As the DMH SE MIS director, Killion was responsible for all the computer hardware and software issues in the region. In particular, Killion supervised a wide area network ("WAN") covering the entire region. Her office was in the Brockton Multi-Service Center, however, she also visited the various outlying facilities to deal with MIS issues.
3. Killion is a Bargaining Unit 6 employee. She is paid on an hourly basis.
4. John P. Sullivan is the DMH SE Area director. As such, Sullivan is responsible for all DMH personnel and facilities in that region. Sullivan was Killion's supervisor and she reported directly to him.
5. Sullivan and Killion did not know one another when she transferred to DMH from the Executive Office of Administration & Finance, but their close working relationship at DMH developed into a close personal friendship extending outside the office. It extended as well to their respective families. The friendship of the families was known to others within the DMH SE Area office.
6. Sullivan's policy for the SE Area required full justification for overtime requests and set specific criteria that had to be met for each period of overtime requested.

7. Between February 11, 1996, and June 7, 1997, Sullivan authorized Killion to work 528 hours of overtime, mostly in 10 hour per week increments. Sullivan signed and authorized all 53 of Killion's overtime slips as the program manager.^{1/}

8. In FY 96 Killion's overtime pay rate was \$33.53/hour. In FY 97 her overtime pay rate was \$38.94/hour. Ten hours of overtime each week meant an extra \$389.40 each week in her check or an extra \$20,284.00 per year.

9. During this same period of time when Killion individually received 678 hours of overtime, all other MIS staff employees combined received a total of 60.5 hours.

10. Killion failed to work a significant number of the overtime hours for which she received compensation.^{2/}

11. Killion was authorized to work the following flextime schedule: Monday through Wednesday 8:00 a.m. to 5:00 p.m., Thursday 2:00 p.m. to 11:00 p.m. and six hours Friday at home.^{3/} In fact, Killion usually arrived at work between 9:00 and 9:30 a.m. on Monday through Wednesday, and between 3:30 and 4:00 p.m. on Thursdays. Killion left work almost every Thursday night between 9:30 and 10:00 p.m..

12. Of the 1,100 employees in the SE Area, less than 10 are authorized flextime. Of the people authorized flextime, Killion is the only one allowed to work at home.

13. Killion did not work a significant number of the flextime hours for which she received compensation.

14. In April 1998, Killion resigned from her position.

15. Section 23(b)(2) G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use her position to obtain for herself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

16. Killion used her position as MIS director to receive compensation for overtime and flextime hours that she did not work.

17. This use of position resulted in Killion obtaining the unwarranted privilege of receiving compensation for hours she did not work.

18. The compensation she received for the hours not worked exceeded \$50. Therefore, the privilege was of substantial value.^{4/}

19. The privilege which Killion received was not available to similarly situated individuals.

20. Thus, by receiving \$50 or more in compensation for overtime and flextime hours that she did not work, Killion knowingly used her MIS director position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of §23(b)(2).

In view of the foregoing violations of G.L. c. 268A by Killion, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Killion:

(1) that Killion pay to the Commission the sum of two thousand dollars (\$2,000) as a civil penalty for the violation of G.L. c. 268A, §23(b)(2); and

(2) that Killion waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 16, 1999

^{1/}DMH was only able to locate 53 overtime slips for Killion for the period February 11, 1996 to June 7, 1997. These 53 slips totaled 528 hours of overtime. The payroll records for this 69 week period, however, indicate that Killion was paid for 678 hours of overtime.

^{2/}Given the absence of accurate records, it is now impossible to approximate how many of these hours were not worked.

^{3/}Killion was not required to nor did she document the flextime at home hours.

^{4/}The Commission defines "substantial value" as anything with a value of \$50. See *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976); *EC-COI-93-14*.